

In Re: Dee's & J B-B-Que)
Tangible Personal Property Account No. P123795) Rutherford County
Tax year 2007)

The Rutherford County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$51,100	\$15,330

On July 9, 2007, the taxpayer filed an appeal with the State Board of Equalization. As indicated on the appeal form, the above assessment was not appealed to the Rutherford County Board of Equalization ("county board") during its regular annual session for tax year 2007.

The undersigned administrative judge conducted a hearing of this matter on December 19, 2007 in Murfreesboro. The appellant, Dedrick L. Messenger (d/b/a Dee's & J B-B-Que), represented himself at the hearing. Assessor John Barbee was assisted by Pamela Oxsher, Supervisor of the Personal Property Section of his office.

Mr. Messenger, who is a schoolteacher and a pastor, resides at 1626 Windy Meadow Drive in Christiana, Tennessee. On or about January 1, 2005, with little more than a 1986 Ford Ranger and a barbecue grill, he began to operate a small-scale business out of his home called "Dee's & J B-B-Que." Upon discovery of the business license listing, the Assessor's office added an account in that name to the personal property assessment roll.

In tax years 2005 and 2006, based on the information reported by Mr. Messenger on the tangible personal property schedule, the Assessor placed a minimal value on this account. Meanwhile, Dee's & J B-B-Que's gross annual sales apparently fell short of the \$3,000-per-year threshold for tax liability under the Business Tax Act.¹ Alas, on the *ad valorem* tax front, a "perfect storm" of sorts developed in tax year 2007. Perhaps misguided by his exemption from the business tax, Mr. Messenger failed to file a tangible personal property schedule with the Assessor's office. Hence the Assessor was obliged to make a "forced assessment" on the subject account. In accordance with Tenn. Code Ann. section 67-5-903(c), notice of this assessment was mailed to the taxpayer's home address on or about May 15, 2007.

¹ See Tenn. Code Ann. section 67-4-712(d).

Historically, forced assessments of tangible personal property in Rutherford County were programmed to exceed the assessment for the previous tax year by a certain increment (say, 25%). Unfortunately for Mr. Messenger, in 2007, the Assessor's office adopted a less arbitrary method for assessing unreported personal property which involved the tabulation of "average," "below average," and "above average" values for ostensibly similar types of business. As a result, the personal property used or held for use in his so-called "barbecue restaurant" was appraised at a drastically higher \$51,100.

Had Mr. Messenger timely exercised the right of appeal that was explained in the assessment change notice, the new appraisal would likely have been adjusted by the county board to his satisfaction. But not until the county board had ended its regular 2007 session did he contact the Assessor's office regarding the increased assessment of the subject property.² Thus Mr. Messenger initiated this appeal to the State Board in an attempt to obtain relief.

Concerning the statutory right of appeal to the State Board, Tenn. Code Ann. section 67-5-1412(b)(1) provides (in relevant part) that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

See also Tenn. Code Ann. section 67-5-1401.

In 1991, however, the General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to appeal an assessment to the local board of equalization. The State Board may accept a direct appeal upon a showing of reasonable cause up to March 1 of the year following the tax year in controversy. Tenn. Code Ann. section 67-5-1412(e).

The Assessment Appeals Commission, appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502, has declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer's control**...[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

Regrettably, nothing in the record of this proceeding suggests that any "circumstance beyond the taxpayer's control" precluded Mr. Messenger from contesting the forced assessment of the subject property before the county board. Rather, it appears that his failure to pursue that

²The deadline for appeal to the county board (June 15, 2007) was specified in a legal notice which the Assessor caused to be published in a local newspaper in compliance with Tenn. Code Ann. section 67-5-508(a)(2).

administrative remedy within the allotted time was mainly attributable to confusion and/or neglect. As the Commission pointedly proclaimed in the case of Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993):

A taxpayer...cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business **or lack of awareness of the manner or necessity of appeal.** [Emphasis added.]

The administrative judge expresses no opinion as to whether the Assessor would have the authority (independent of the State Board) under Tenn. Code Ann. section 67-5-903(d), as amended by Chapter No. 179 of the Public Acts of 2007, to "correct" the forced assessment under appeal.³

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

³The cited Act, effective May 16, 2007, amended Tenn. Code Ann. section 67-5-903(d) by adding the following sentence:

Whether or not an assessor's error affected the original assessment, the assessor may correct a forced assessment using the procedure provided and subject to the deadlines provided in section 67-5-509, upon determining that the taxpayer was not in business as of the assessment date for the year at issue, and upon determining that the taxpayer did not own or lease tangible personal property used or held for use in a business as of the assessment date for the year at issue.

As defined in section 67-4-702(a)(2) of the Business Tax Act, the word *business* "does not include occasional and isolated sales or transactions by a person not routinely engaged in business."

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of January, 2008.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Dedrick Messenger, Dee's & J B-B-Que
John Barbee, Rutherford County Assessor of Property

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